

**Compilation of Information related to State Interests, Goals and
Objectives and Liability related to Delta Levees and Flood Management**

1. What potential goals and objectives should State investments in Delta levees further (from SBX7 1)?

The items below are potential goals from which the Council could choose that could best guide priorities for Delta levee investments. Water and Public Resources Code sections relevant to these potential goals are provided for illustrative purposes.

A. The Coequal Goals

- Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (Delta Protection Act -- Public Resources Code section 29702).
 - *Water Supply Reliability:*
 - ✓ Improve the water conveyance system and expand statewide water storage (Delta Reform Act -- Water Code section 85020).
 - ✓ Manage the Delta's water and environmental resources and the water resources of the state over the long term (Delta Reform Act -- Water Code section 85020).
 - *Ecosystem Restoration:*
 - ✓ Restore the Delta ecosystem, including fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem (Delta Reform Act -- Water Code section 85020).
 - ✓ Improve water quality to protect human health and the environment consistent with achieving water-quality objectives in the Delta (Delta Reform Act -- Water Code section 85020).

B. Protect people and property:

- Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection. (Delta Reform Act -- Water Code section 85305(a)).
- Existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to persons living and working in the Delta (Delta Reform Act -- Water Code section 85011(c)(4)).
- Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety (Delta Protection Act -- Public Resources Code section 29702).
- Delta property ownership developed pursuant to the federal Swamp Land Act of 1850, and state legislation enacted in 1861, and as a result of the construction of levees to keep previously seasonal wetlands dry throughout the year. That property ownership, and the exercise of associated rights, continue to depend on the landowners' maintenance of those nonproject levees and do not include any right to state funding of levee maintenance or repair. (Delta Reform Act -- Water Code section 85003).

C. Protect the Delta's unique cultural, recreational, natural resource, and agricultural values.

- Protect and enhance the unique cultural, recreational, and agricultural values of the Delta as an evolving place (Delta Reform Act -- Water Code section 85020).

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- Protect, maintain, and, where possible, enhance and restore the overall quality of the Delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities (Delta Protection Act -- Public Resources code section 29702).
- Ensure orderly, balanced conservation and development of Delta land resources (Delta Protection Act -- Public Resources code section 29702).

2. What State's interests should investments Delta levees further?

The State interests that Delta levee investments could further will, in part, be shaped by the goals the Council identifies as most important in guiding levee investments. The items below provide a menu of potential State interests that levee investments could further, organized in relation to potential goals for State levee investments. Water and Public Resources Code sections and agency plans, reports, and guidelines relevant to these potential State interests are provided for illustrative purposes.

A. *Water Supply Reliability*

- Export water supply conveyance (DWR Delta Levees Investment Framework; Water Code section 12201; Water Code section 85020(f); Water Code section 85304; Delta Plan RR P1).
- Water supply aqueducts and pumping plants (DWR Delta Levees Investment Framework; Water Code section 85020(f); Water Code section 85304; Delta Plan RR P1).
- Western islands and other levees that help manage salinity (DWR Delta Levees Investment Framework; Water Code section 12201; Water Code sections 12311); Water Code section 12987(f); Water Code section 85020(e); Delta Plan RR P1).

B. *Ecosystem Restoration*

- Significant wetlands, both natural and those created by waterfowl-friendly agricultural practices (DWR Delta Levees Investment Framework; Water Code sections 12311; Water Code section 12981; Water Code section 12987(c); Water Code section 78543(a); Water Code section 85022(d)(5); Delta Plan RR P1).
- River corridors that provide for fish and wildlife migration (DWR Delta Levees Investment Framework; Water Code sections 12311; Water Code section 12981; Water Code section 12987(c); Water Code section 78543(a); Water Code section 85022(d)(5); Water Code section 85302(e)(2); Water Code section 85302(e)(4); Delta Plan ER P1).
- Other riparian habitats (Water Code sections 12311; Water Code section 12987(c); Water Code section 78543(a); Water Code section 85022(d)(5)).
- Upland habitats (Water Code sections 12311; Water Code section 85022(d)(5)).
- Western islands and other levees that help manage water quality (DWR Delta Levees Investment Framework; Water Code section 12987(f); Water Code section 85020(e); Water Code sections 12311; Delta Plan RR P1).
- Ecosystem restoration opportunities (Water Code section 12987(f); Water Code section 85022(d)(5)).

C. *People and Property*

- Human life (DWR Delta Levees Investment Framework; Water Code section 12987(f); Water Code section 85305(a); Delta Plan RR P1).

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- Public health: Water and wastewater treatment plants (DWR Delta Levees Investment Framework; Water Code sections 12311; Water Code section 85020(e); Water Code section 85305(a)).
- Regional infrastructure (Water Code section 85022(d)(1); Water Code section 85305(a)):
 - ✓ Highways and railroads (DWR Delta Levees Investment Framework; Water Code sections 12311; Delta Plan RR P1).
 - ✓ River corridors that provide that convey flood flows (DWR Delta Levees Investment Framework; Water Code section 12987(f); Water Code sections 12980 through 12995; Delta Plan RR P1).
 - ✓ Central Valley flood protection system's integrity and functions (California Central Valley Flood Protection Board Strategic Plan; Water Code section 12987(f); Delta Plan RR P1).
 - ✓ Electric transmission lines (DWR Delta Levees Investment Framework; Water Code sections 12311; Delta Plan RR P1).
 - ✓ Petroleum pipelines (DWR Delta Levees Investment Framework; Water Code sections 12311; Delta Plan RR P1).
 - ✓ Navigation and deep-water shipping facilities (DWR Delta Levees Investment Framework; Water Code sections 12311; Water Code section 12987(f); Delta Plan RR P1).
 - ✓ Natural gas storage, production, and transmission facilities (DWR Delta Levees Investment Framework; Water Code section 12311; Delta Plan RR P1).
- Property and businesses (DWR Delta Levees Investment Framework; Water Code sections 12311 for urbanized areas; Water Code section 12987(f); Water Code section 85305(a); Delta Plan RR P1).

D. The Delta's unique values (Water Code section 85022(d)(1))

- Culture:
 - ✓ Cultural and historical assets, including legacy communities (DWR Delta Levees Investment Framework; Delta Plan RR P1).
 - ✓ Aesthetic assets (DWR Delta Levees Investment Framework; Delta Plan RR P1).
 - ✓ Meandering waterways (DWR Delta Levees Investment Framework; Water Code section 12981).
- Recreation:
 - ✓ Recreation facilities (DWR Delta Levees Investment Framework; Water Code section 12981; Water Code section 12987(f); Water Code sections 12311; Delta Plan RR P1).
 - ✓ Outdoor recreation lands (DWR Delta Levees Investment Framework; Water Code section 12981; Water Code section 12987(f); Water Code sections 12311; Delta Plan RR P1).
 - ✓ Meandering waterways (DWR Delta Levees Investment Framework; Water Code section 12981; Water Code section 12987(f); Water Code sections 12311; Delta Plan RR P1).
- Natural resources:
 - ✓ Significant wetlands, both natural and those created by waterfowl-friendly agricultural practices (DWR Delta Levees Investment Framework; Water Code section 12987(c); Water Code section 78543(a); Water Code section 85022(d)(5); Water Code sections 12311; Delta Plan RR P1).
 - ✓ River corridors (DWR Delta Levees Investment Framework; Water Code sections 12311; Water Code section 12987(c); Water Code section 78543(a); Water Code section 85022(d)(5); Delta Plan RR P1).

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- Upland habitats (Water Code sections 12311; Water Code section 85022(d)(5); Water Code section 85302(e)(2)).
- Agriculture: (DWR Delta Levees Investment Framework; Water Code section 12981; Delta Plan RR P1).

3. How should the levee priorities address the risk of State liability for levee failures?

The liabilities of the State for flood protection unavoidably affect priorities for investment in Delta levees. The California Supreme Court has held the State liable for damages caused by failure of a project levee of the State's Central Valley Plan of Flood Control. Payments for damages, like this project levee failure, for which the State is liable can affect all State interests, because they divert funds from the full breadth of potential budget needs to payment of damages for which the State is held liable. The *Paterno v. California* decision, for example, will ultimately cost State taxpayers \$464 million in awarded damages, about two thirds of the State funds provided for non-project Delta levees over four decades.

On the other hand, courts so far have excluded the State from liability for failures of non-project levees. The State has not assumed responsibility for the safety of non-project levees (Water Code section 12983). The Delta Reform Act did not alter these liabilities. Failure of non-project Delta levees, nevertheless, can impose costs on the State, especially for disaster recovery costs, because post-disaster levee repair claims not paid by federal agencies may be reimbursed through the Department of Water Resources' Delta Levees Maintenance Subventions program (Water Code section 12993). Maximizing local levee maintaining agencies' eligibility for federal disaster recovery funding, such as assisting their eligibility for the Army Corps of Engineers' PL 84-99 post-disaster levee repair and rehabilitation program, can reduce potential claims for State assistance.

Fully meeting needs to upgrade the Delta's project levees to standards of the State's Central Valley Plan of Flood Control may help reduce risks of State liability for potential future failures of those project levees. These potential costs are very high, and may be estimated as exceeding potential damages to the lives and properties that these levees protect. Potential post-disaster claims by the local agencies that maintain non-project are likely lower, as they do not include liability for damages to lives and property harmed by those levees' failure.

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